

ESHB 3078 - S COMM AMD

By Committee on Children & Family Services & Corrections

ADOPTED 03/03/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.50.050 and 2001 c 175 s 1, 2001 c 174 s 1, and
4 2001 c 49 s 2 are each reenacted and amended to read as follows:

5 (1) This section governs records relating to the commission of
6 juvenile offenses, including records relating to diversions.

7 (2) The official juvenile court file of any alleged or proven
8 juvenile offender shall be open to public inspection, unless sealed
9 pursuant to subsection (12) of this section.

10 (3) All records other than the official juvenile court file are
11 confidential and may be released only as provided in this section, RCW
12 13.50.010, 13.40.215, and 4.24.550.

13 (4) Except as otherwise provided in this section and RCW 13.50.010,
14 records retained or produced by any juvenile justice or care agency may
15 be released to other participants in the juvenile justice or care
16 system only when an investigation or case involving the juvenile in
17 question is being pursued by the other participant or when that other
18 participant is assigned the responsibility for supervising the
19 juvenile.

20 (5) Except as provided in RCW 4.24.550, information not in an
21 official juvenile court file concerning a juvenile or a juvenile's
22 family may be released to the public only when that information could
23 not reasonably be expected to identify the juvenile or the juvenile's
24 family.

25 (6) Notwithstanding any other provision of this chapter, the
26 release, to the juvenile or his or her attorney, of law enforcement and
27 prosecuting attorneys' records pertaining to investigation, diversion,
28 and prosecution of juvenile offenses shall be governed by the rules of
29 discovery and other rules of law applicable in adult criminal
30 investigations and prosecutions.

1 (7) Upon the decision to arrest or the arrest, law enforcement and
2 prosecuting attorneys may cooperate with schools in releasing
3 information to a school pertaining to the investigation, diversion, and
4 prosecution of a juvenile attending the school. Upon the decision to
5 arrest or the arrest, incident reports may be released unless releasing
6 the records would jeopardize the investigation or prosecution or
7 endanger witnesses. If release of incident reports would jeopardize
8 the investigation or prosecution or endanger witnesses, law enforcement
9 and prosecuting attorneys may release information to the maximum extent
10 possible to assist schools in protecting other students, staff, and
11 school property.

12 (8) The juvenile court and the prosecutor may set up and maintain
13 a central record-keeping system which may receive information on all
14 alleged juvenile offenders against whom a complaint has been filed
15 pursuant to RCW 13.40.070 whether or not their cases are currently
16 pending before the court. The central record-keeping system may be
17 computerized. If a complaint has been referred to a diversion unit,
18 the diversion unit shall promptly report to the juvenile court or the
19 prosecuting attorney when the juvenile has agreed to diversion. An
20 offense shall not be reported as criminal history in any central
21 record-keeping system without notification by the diversion unit of the
22 date on which the offender agreed to diversion.

23 (9) Upon request of the victim of a crime or the victim's immediate
24 family, the identity of an alleged or proven juvenile offender alleged
25 or found to have committed a crime against the victim and the identity
26 of the alleged or proven juvenile offender's parent, guardian, or
27 custodian and the circumstance of the alleged or proven crime shall be
28 released to the victim of the crime or the victim's immediate family.

29 (10) Subject to the rules of discovery applicable in adult criminal
30 prosecutions, the juvenile offense records of an adult criminal
31 defendant or witness in an adult criminal proceeding shall be released
32 upon request to prosecution and defense counsel after a charge has
33 actually been filed. The juvenile offense records of any adult
34 convicted of a crime and placed under the supervision of the adult
35 corrections system shall be released upon request to the adult
36 corrections system.

1 (11) In any case in which an information has been filed pursuant to
2 RCW 13.40.100 or a complaint has been filed with the prosecutor and
3 referred for diversion pursuant to RCW 13.40.070, the person the
4 subject of the information or complaint may file a motion with the
5 court to have the court vacate its order and findings, if any, and,
6 subject to subsection (23) of this section, order the sealing of the
7 official juvenile court file, the social file, and records of the court
8 and of any other agency in the case.

9 (12) The court shall not grant any motion to seal records made
10 pursuant to subsection (11) of this section that is filed on or after
11 July 1, 1997, unless it finds that:

12 (a) For class B offenses other than sex offenses, since the last
13 date of release from confinement, including full-time residential
14 treatment, if any, or entry of disposition, the person has spent
15 ~~((ten))~~ five consecutive years in the community without committing any
16 offense or crime that subsequently results in conviction. For class C
17 offenses other than sex offenses, since the last date of release from
18 confinement, including full-time residential treatment, if any, or
19 entry of disposition, the person has spent ~~((five))~~ two consecutive
20 years in the community without committing any offense or crime that
21 subsequently results in conviction. For gross misdemeanors and
22 misdemeanors, since the last date of release from confinement,
23 including full-time residential treatment, if any, or entry of
24 disposition, the person has spent two consecutive years in the
25 community without committing any offense or crime that subsequently
26 results in conviction ~~((and the person is at least eighteen years old.~~
27 ~~For gross misdemeanors, since the last date of release from~~
28 ~~confinement, including full-time residential treatment, if any, or~~
29 ~~entry of disposition, the person has spent three consecutive years in~~
30 ~~the community without committing any offense or crime that subsequently~~
31 ~~results in conviction and the person is at least eighteen years old)).~~
32 For diversions, since completion of the diversion agreement, the person
33 has spent two consecutive years in the community without committing any
34 offense or crime that subsequently results in conviction or diversion
35 ~~((and the person is at least eighteen years old));~~

36 (b) No proceeding is pending against the moving party seeking the
37 conviction of a juvenile offense or a criminal offense;

1 (c) No proceeding is pending seeking the formation of a diversion
2 agreement with that person;

3 (d) The person has not been convicted of a class A or sex offense;
4 and

5 (e) Full restitution has been paid.

6 (13) The person making a motion pursuant to subsection (11) of this
7 section shall give reasonable notice of the motion to the prosecution
8 and to any person or agency whose files are sought to be sealed.

9 (14) If the court grants the motion to seal made pursuant to
10 subsection (11) of this section, it shall, subject to subsection (23)
11 of this section, order sealed the official juvenile court file, the
12 social file, and other records relating to the case as are named in the
13 order. Thereafter, the proceedings in the case shall be treated as if
14 they never occurred, and the subject of the records may reply
15 accordingly to any inquiry about the events, records of which are
16 sealed. Any agency shall reply to any inquiry concerning confidential
17 or sealed records that records are confidential, and no information can
18 be given about the existence or nonexistence of records concerning an
19 individual.

20 (15) Inspection of the files and records included in the order to
21 seal may thereafter be permitted only by order of the court upon motion
22 made by the person who is the subject of the information or complaint,
23 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of
24 this section.

25 (16) Any adjudication of a juvenile offense or a crime subsequent
26 to sealing has the effect of nullifying the sealing order. Any
27 charging of an adult felony subsequent to the sealing has the effect of
28 nullifying the sealing order for the purposes of chapter 9.94A RCW.
29 The administrative office of the courts shall ensure that the superior
30 court judicial information system provides prosecutors access to
31 information on the existence of sealed juvenile records.

32 (17)(a) A person eighteen years of age or older whose criminal
33 history consists of only one referral for diversion may request that
34 the court order the records in that case destroyed. The request shall
35 be granted, subject to subsection (23) of this section, if the court
36 finds that two years have elapsed since completion of the diversion
37 agreement.

1 (b) A person twenty-three years of age or older whose criminal
2 history consists of only referrals for diversion may request that the
3 court order the records in those cases destroyed. The request shall be
4 granted, subject to subsection (23) of this section, if the court finds
5 that all diversion agreements have been successfully completed and no
6 proceeding is pending against the person seeking the conviction of a
7 criminal offense.

8 (18) If the court grants the motion to destroy records made
9 pursuant to subsection (17) of this section, it shall, subject to
10 subsection (23) of this section, order the official juvenile court
11 file, the social file, and any other records named in the order to be
12 destroyed.

13 (19) The person making the motion pursuant to subsection (17) of
14 this section shall give reasonable notice of the motion to the
15 prosecuting attorney and to any agency whose records are sought to be
16 destroyed.

17 (20) Any juvenile to whom the provisions of this section may apply
18 shall be given written notice of his or her rights under this section
19 at the time of his or her disposition hearing or during the diversion
20 process.

21 (21) Nothing in this section may be construed to prevent a crime
22 victim or a member of the victim's family from divulging the identity
23 of the alleged or proven juvenile offender or his or her family when
24 necessary in a civil proceeding.

25 (22) Any juvenile justice or care agency may, subject to the
26 limitations in subsection (23) of this section and (a) and (b) of this
27 subsection, develop procedures for the routine destruction of records
28 relating to juvenile offenses and diversions.

29 (a) Records may be routinely destroyed only when the person the
30 subject of the information or complaint has attained twenty-three years
31 of age or older, or is eighteen years of age or older and his or her
32 criminal history consists entirely of one diversion agreement and two
33 years have passed since completion of the agreement.

34 (b) The court may not routinely destroy the official juvenile court
35 file or recordings or transcripts of any proceedings.

36 (23) No identifying information held by the Washington state patrol
37 in accordance with chapter 43.43 RCW is subject to destruction or

1 sealing under this section. For the purposes of this subsection,
2 identifying information includes photographs, fingerprints, palmprints,
3 soleprints, toeprints and any other data that identifies a person by
4 physical characteristics, name, birthdate or address, but does not
5 include information regarding criminal activity, arrest, charging,
6 diversion, conviction or other information about a person's treatment
7 by the criminal justice system or about the person's behavior.

8 (24) Information identifying child victims under age eighteen who
9 are victims of sexual assaults by juvenile offenders is confidential
10 and not subject to release to the press or public without the
11 permission of the child victim or the child's legal guardian.
12 Identifying information includes the child victim's name, addresses,
13 location, photographs, and in cases in which the child victim is a
14 relative of the alleged perpetrator, identification of the relationship
15 between the child and the alleged perpetrator. Information identifying
16 a child victim of sexual assault may be released to law enforcement,
17 prosecutors, judges, defense attorneys, or private or governmental
18 agencies that provide services to the child victim of sexual assault."

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19 On page 1, line 1 of the title, after "records;" strike the
20 remainder of the title and insert "and reenacting and amending RCW
21 13.50.050."

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